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September 11, 2012

Hon. Richard J. Sullivan
(by emailsullivan@nysd.uscourts.gov)
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: United States v. Vilar and Tanaka – 05-cr 621(RJS)
Reply on Motion for Bail Pending Appeal

Dear Judge Sullivan:

I write this brief reply in response to the government opposition to bail pending appeal (Doc. 534, filed 9-11-2012).

Nowhere does the government discuss the fugitive disentitlement doctrine, which is controlling *law*, the significance of which was not previously argued in either this Court *or* the Court of Appeals, but which compellingly supports the conclusion that defendants have *no* incentive to “flee.” Ignoring this law (as it ignored \$50 million sitting in Amerindo accounts during trial and tried to ignore even today), the government merely casts aspersions on everyone, including the defendants and Walter Pfaeffle, who had worked for endless hours for free assisting attorneys, until, after my consultation with the Circuit’s CJA coordinator, we sought and were granted permission to use him as an appellate paralegal to assist us when we needed it during preparation of the appeal. Why this circumstance should totally

disqualify him from explaining why he knows that Alberto Vilar is virtually penniless, is not explained. Nor does the government even *try to* do so; it refused to even *discuss* bail, necessitating this application.

Now, vilification, instead of a clear analysis of the facts that, in the end, the government does not dispute, is the basis on which the government would see Your Honor's ruling denying release pending appeal. The government has not disputed and cannot dispute the substance of what Mr. Pfaeffle states. Its out-and-out rejection of the statement of a witness with relevant knowledge, merely because he befriended Alberto Vilar, is irresponsible.

Gary Tanaka's medical condition, while submitted *pro se* to the appellate court, was not before this Court previously. Even if it had been, the government's condemnation of Mr. Tanaka to letting his mouth and teeth degrade even more in the absence of reconstructive surgery, because his "cancer has not recurred," is just mystifying.

The government, in sum, has failed to deal with the implications of the fugitive disentitlement doctrine and the realities of what the defendants face. The defendants have *no* incentive to flee. Both men were free on bail pending trial and complied. They would lose everything if they were to fail to appear now. The Court should grant bail pending appeal.

Mr. Pfaeffle has asked for an opportunity to respond to the government's insinuations, and I attach his letter response hereto.

Very truly yours,
/s/
Vivian Shevitz

Cc: Benjamin Naftalis